

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT ) FINAL ORDER  
NO. 20074-s76G ISSUED TO DEAN )  
AND MARY ANN STATON )

\* \* \* \* \*

The time period for filing exceptions to the Hearing Examiner's Proposal for Decision has expired. No timely exceptions were received from any party of record. Therefore, the Department accepts and adopts the Findings of Fact and Conclusions of Law of the Hearing Examiner as contained in the February 19, 1987 Proposal for Decision, and incorporates them herein by reference.

The Department hereby takes note of, and corrects, two printing errors in the Proposal for Decision:

The bottom line on the front page of the Proposal, containing the words "inclusive, for fishery purposes, and June 1 through ", was not printed by the word processor. Therefore, the Statement of the Case is herein corrected to read, in relevant part, "The proposed periods of use were January 1 to December 31, inclusive, for fishery purposes, and June 1 through September 15, inclusive, of each year for flood irrigation purposes."

The second erratum, which occurs on page 7 of the Proposal, is the substitution of "Gallatin" for "Deer Lodge" as the county where the point of diversion is located. (Finding of Fact 1, second paragraph, first sentence.) The correct county name appears in the remainder of the legal description. Therefore,

the third sentence of Finding of Fact 1 is herein corrected to read, "The source and point of diversion is specified on the Permit as an unnamed tributary of Prairie Gulch, at a point in the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 04, Township 5 North, Range 10 West, Deer Lodge County, Montana."

Since these errata are descriptive, rather than substantive, no injury has accrued to any party of record.

Based upon the Findings of Fact and Conclusions of Law, the corrections of erratum specified herein, and all files and records in this matter, the Department of Natural Resources and Conservation makes the following:

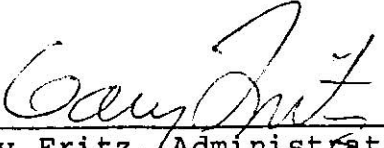
ORDER

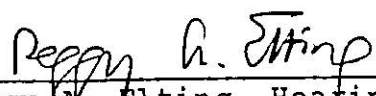
Beneficial Water Use Permit No. 20074-s76G, granted to Dean and Mary Ann Staton, hereby is revoked.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this 16<sup>th</sup> day of March, 1987.

  
\_\_\_\_\_  
Gary Fritz, Administrator  
Department of Natural  
Resources and Conservation  
1520 E. 6th Avenue  
Helena, Montana 59620-2301  
(406) 444 - 6605

  
\_\_\_\_\_  
Peggy A. Elting, Hearing Examiner  
Department of Natural Resources  
and Conservation  
1520 E. 6th Avenue  
Helena, Montana 59620-2301  
(406) 444 - 6612

BB

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT ) PROPOSAL FOR DECISION  
NO. 20074-s76G BY DEAN AND )  
MARY ANN STATON )

\* \* \* \* \*

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing in the above-entitled matter was held on January 7, 1987, in the City Hall in Deer Lodge, Montana.

Dean Staton and Mary Ann Staton, holders of the above-specified Beneficial Water Use Permit, appeared personally at the hearing.

The Department of Natural Resources and Conservation (hereafter, the "Department") was represented by legal counsel Candace West.

T.J. Reynolds, Field Manager of the Helena Water Rights Bureau Field Office, appeared as a witness for the Department.

STATEMENT OF THE CASE

On August 28, 1978, Dean and Mary Ann Staton filed an Application for Beneficial Water Use Permit, seeking to appropriate 100 gallons per minute ("gpm") up to 15.25 acre-feet ("ac/ft.") of water per year, for new flood irrigation of 12 acres (15.00 ac/ft.) and for fishery use (.25 ac/ft.). The proposed periods of use were January 1 to December 31,

**CASE # 20074**

September 15, inclusive, of each year for flood irrigation purposes. The water was to be impounded in a 5 ac/ft. reservoir at the proposed point of diversion.

The Application requested a point of diversion in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, and a place of use in the SW $\frac{1}{4}$  of Section 4, Township 05 North, Range 10 West, Deer Lodge County, Montana. The source of water applied for is surface water from an unnamed tributary of Prairie Gulch. The Application lists the means of diversion as gravity flow from the reservoir to flood-irrigate the proposed place of use, and describes the proposed reservoir as an "earth fill dam with drainage device and emergency spillways installed."

A Request for Waiver of Notice was filed, asking that the public notice of the Application be waived. The downstream water user, Mr. Jack Assey, was contacted and had no objection to the reservoir. He asserted that the reservoir leaked, and did not hold back enough water to adversely affect him. (See June 26, 1979 Memorandum by Robert J. Peter, accompanying Request for Waiver of Notice.)

On July 10, 1979, a Provisional Permit was issued to Dean and Mary Ann Staton, granting them the uses, flow rate, volumes, and places of use as applied for, with a priority date of August 28, 1978 at 3:50 p.m. The point of diversion was specified to be the W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 04, Township 5 North, Range 10 West. The Provisional Permit stated, in relevant part:

The diversion and distribution works for this appropriation shall be completed, and water shall be

applied to beneficial use as specified above, on or before June 15, 1980, or within any authorized extension of time. The Notice of Completion of Surface Water Development, Form 617, shall be filed on or before August 15, 1980.

On April 6, 1982, the Helena Water Rights Bureau field office sent Mr. Staton a certified letter stating that the Notice of Completion had never been received, and informing Mr. Staton that his Permit would be revoked unless he timely filed a Notice of Completion of Water Development or an Application for Extension of Time to complete the development (both forms were enclosed with the letter), or showed cause pursuant to MCA § 85-2-314 why the Permit should not be revoked.

On April 14, 1982, the Department received a notarized Notice of Completion of Water Development, signed by Dean Staton and dated April 10, 1982, attesting that the water development had been completed and water put to beneficial use. In that portion of the Notice of Completion of Water Development form filed by Mr. Staton where the Permit holder is asked to give details of the appropriation as actually developed, if the development "was not fully developed as specified within the terms, conditions, orders, and limitations of Permit No. 20074-76G", Mr. Staton wrote "details on extension application", then covered over the words "extension application" with liquid typewriter white-out. (The words are discernible only by looking through the form from the back.) A search of Department records shows that Mr. Staton did not submit any Application for Extension of Time, or other document or information pertaining

to the Permit. (This fact is corroborated by Mr. Staton's decision to file the Notice of Completion of Water Development form, rather than the Request for Extension of Time form, which had been sent to him.)

T.J. Reynolds, Field Manager of the Helena Water Rights Bureau Field Office, made a field investigation of the permitted appropriation on August 16, 1984. The Field Report prepared by Mr. Reynolds states, in part:

The dam has been constructed and is located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 4, T5N, R10W. During my field investigation, the pool area was totally dry. It appeared the reservoir has never held any water. There was no irrigation developed below the reservoir at all and since the pond will not hold water, there is no way it can be used for a fishery.

Jim Beck hand-delivered a copy of the Permit Verification Data report to Mr. Staton on December 5, 1984. The verification form recommended that the Department not issue a certificate, based on Mr. Reynolds' site investigation. Mr. Staton returned the verification form (signed by himself on December 5, 1984), stating that he disagreed with the specification of the water source (Item 4), and with the stated size of the reservoir outlet pipe (Item 5). His written response further stated, in part, that "this is a permit to use run off water and water not utilized by Bud Speelman who is upstream of the Dam. The Dam fills up 3 or 4 times a year and is used when there is water in it. By rabbits, Ducks, Deer, Etc. Also by Neighbors Horses for drinking." (See Item 19 of Permit Verification form.) Mr. Staton requested that a hearing be held on the items of disagreement.

T.J. Reynolds contacted Mr. Staton again on November 17, 1986. Mr. Staton acknowledged that the reservoir has never been used for fishery or irrigation purposes, but stated that he wished to maintain the Permit since the reservoir has been used for stockwatering. (See November 25, 1986 Memorandum by T.J. Reynolds.)

A show cause hearing on the Permit was held on January 7, 1987. The record was left open until January 27, 1987 to allow Mr. and Mrs. Staton to consider whether they wished to file an Application for Change or apply for a stockwater impoundment exemption pursuant to MCA § 85-2-306(3), or pursue other options with regard to obtaining water rights. The record was to be left open until February 12, 1987, if the Statons submitted any information on how they planned to proceed in this matter, to allow Department legal counsel to submit a response. No information was received from the Statons.

#### EXHIBITS

The Department offered four exhibits for admission into the record in this matter:

Department Exhibit 1 is a photocopy of the Application for Beneficial Water Use Permit No. 20074-s76G, filed by Dean and Mary Ann Staton, including the Department endorsement and information on filing the Permit with the Clerk and Recorder's office in Deer Lodge County, Montana (5 pages).

Department Exhibit 2 is a photocopy of the Provisional Permit issued to Dean and Mary Ann Staton (2 pages).

Department Exhibit 3 is a photocopy of the Notice of Completion of Water Development on Permit No. 20074-76G, signed by Dean Staton and received by the Department on April 14, 1982 (1 page).

Department Exhibit 4 is a photocopy of the Permit Verification Data form for Permit No. 20074-s76G filled out and signed by T.J. Reynolds, and filled out and signed by Dean Staton. The form is accompanied by a photocopy of an overlay map, prepared by T.J. Reynolds on January 28, 1985, showing the location of the Permittee's dam, and of roads and ditches in the area (3 pages).

Department Exhibits 1, 2, 3, and 4 were accepted into the record without objection.

The Permittee offered one exhibit for admission into the record:

Permittee Exhibit 1 consists of two photographs of the Permittee's reservoir. Mr. Staton testified that he was present when the photographs were taken, and estimated that the photographs were taken in February or March, 1986.

Permittee Exhibit 1 was accepted into the record without objection. However, Permittee Exhibit 1 hereby is found to be relevant only for the purpose of corroborating testimony as to the general size of the reservoir and the fact that it currently impounds water for some amount of time. Since the photographs were taken nearly four years after Mr. Staton filed his Notice of Completion, and more than five and a half years after his completion deadline, the photographs have no probative value on



the question of whether the Permittees had perfected a right prior to the project deadline of June 15, 1980.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following proposed Findings of Fact, Conclusions of Law, and Order.

#### FINDINGS OF FACT

1. Beneficial Water Use Permit No. 20074-s76G was issued to Dean and Mary Ann Staton on July 10, 1979, with a priority date of August 28, 1978 at 3:50 p.m. This Provisional Permit grants the Statons 100 gallons per minute up to 15 ac/ft. of water per year for new flood irrigation, with an additional .25 ac/ft. of water per year to be used for fishery purposes.

The source and point of diversion is specified on the Permit as an unnamed tributary of Prairie Gulch, at a point in the  $W\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$  of Section 04, Township 5 North, Range 10 West, Gallatin County, Montana. The means of diversion is specified as a 5 ac/ft. reservoir. The place of use for irrigation is specified as a total of 12 acres in the  $SW\frac{1}{4}$  of Section 04, Township 5 North, Range 10 West, Deer Lodge County, Montana. The specified period of appropriation is January 1 through December 31 of each year for fishery purposes, and June 1 to September 15, inclusive, of each year for irrigation.

The Permit specifies that the diversion and distribution works for the appropriation must be completed, and water must be applied to beneficial use as specified in the Permit, on or

before June 15, 1980, or within any authorized extension of time. The Permit further specifies that the Notice of Completion of Surface Water Development must be filed on or before August 15, 1980.

2. Mr. and Mrs. Staton did not file an Application for Extension of Time in which to perfect their Permit to Appropriate Water. (Review of Department records.)

3. On April 14, 1982, the Department of Natural Resources and Conservation received a Notice of Completion of Water Development, signed by Dean Staton, attesting that the diversion and distribution works had been completed and water put to beneficial use.

The Notice of Completion did not contain any statement by Mr. Staton in response to the Notice's request that details be given if the development was not fully developed as specified within the terms, conditions, orders, and limitations of Permit No. 20074-s76G.

4. T.J. Reynolds made a site visit to the Staton property on August 16, 1984, for purposes of verifying whether the Permittees were appropriating water in compliance with Beneficial Water Use Permit No. 20074-s76G.

The site visit verified that the reservoir had been constructed, at a point in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 04, Township 5 North, Range 10 West. However, Mr. Reynolds was unable to verify the fishery use since the reservoir was completely dry and did not appear to hold water. Mr. Reynolds also was unable to verify the irrigation use, since no irrigation had been

developed at the specified place of use below the reservoir.  
(See January 29, 1985 Memorandum by T.J. Reynolds.)

On the basis of his site visit, Mr. Reynolds recommended that no Certificate be issued on the water right in question, and that the Permit be revoked. (See Permit Verification Data Form.)

5. Mr. Staton constructed his reservoir prior to the construction deadline, and installed a flow-through pipe, with a smaller pipe inside which he intended to hook to a hose or pipe for irrigation of land below the reservoir site. (Testimony of Mr. Staton.)

He stated that the reservoir has filled with water five or six times since he constructed it. Mr. Staton testified that the reservoir leaks, but that it does hold water for a while (see Permittee Exhibit 1), and that it is holding water for longer and longer periods of time. Currently it takes three or four weeks for the water to seep out completely. He stated that he believes that silt is settling out of the water, and gradually is sealing the reservoir. He said that he has put freshwater shrimp in the reservoir each time it has filled, in part to develop a food source for any fish he might decide to stock, but also in the hopes that the shrimp would stir up sediment to help seal the bottom of the reservoir.

T.J. Reynolds testified that the reservoir does not have a steady supply of water, and that it cannot hold what water it does capture because the soils in the reservoir are too coarse to hold water. He agreed that it is probable that silt is

settling and partially sealing the reservoir, but said that the dam would be adequate for fishery purposes only if it was lined or sealed, and had a year-round supply of water.

T.J. Reynolds estimated the reservoir capacity at approximately 1.2 ac/ft. of water, while Mr. Staton calculated the capacity as being between 7.5 and 15.5 ac/ft. of water. Mr. Reynolds, recalculating on the basis of Mr. Staton's figures on reservoir measurements and how far water backs up, stated that the reservoir possibly could hold 9.8 ac/ft. of water, provided that Mr. Staton's figures are accurate.

The Permit issued in this matter specifies the reservoir size at 5 ac/ft. (as applied for by the Statons); however, Mr. Staton stated that the 5 ac/ft. volume is the amount of water above the outlet pipe, and that he did not add in the dead storage below the pipe.

6. Mr. Staton testified that he has never used water from the reservoir for irrigation, since the flow in the source stream is intermittent and does not occur during the irrigation season when it is needed. Mr. Staton testified that he has not been able to use the reservoir for fish, either, since the dam has not held water for any length of time.

Mr. Staton testified that the major problem with his project is that "there's not enough water to really put it to beneficial use." He stated that he could not afford to upgrade his system for the amount of water he receives, for example, by lining the reservoir, and that he would be willing to make modifications only if he was allowed to develop the spring at the head of the

creek. Mr. Staton alleged that the owner of the property on which the spring is located would not give permission for access and development of the spring.

7. Mr. Staton stated that, although he has not utilized the water for the purposes for which he applied and was granted a Permit, the water has been put to beneficial use. He alleged that when the reservoir has water in it, it is used for stockwater by his neighbors' horses, and that he believes wildlife and waterfowl may also make use of the water, as well as the vegetation which may be subirrigated by seepage from the reservoir.

8. Mr. Staton testified that he filed a Notice of Completion because he had finished the dam, assumed it would hold water, and therefore believed his project was complete. He testified that he had not used the water for irrigation or for fishery purposes prior to filing his Notice of Completion, nor has he done so since, because he has not had water at the right time of the year for irrigation, nor in sufficient quantities for fish and irrigation uses; that the lack of water, however, has not been his fault.

Based upon the foregoing Findings of Fact and upon the record in this matter the Hearing Examiner makes the following:

PROPOSED CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and all the parties hereto.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled, therefore the matter was properly before the Hearing Examiner.

3. MCA § 85-2-314 states:

If the work on an appropriation is not commenced, prosecuted or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be modified or revoked. If the permittee fails to show sufficient cause, the department may modify or revoke the permit.

4. Pursuant to MCA § 85-2-315, T.J. Reynolds of the Helena Water Rights Bureau field office did a field verification investigation of Dean and Mary Ann Staton's appropriation after Mr. Staton filed a Notice of Completion for Permit No. 20074-s76G. As the result of Mr. Reynolds' findings, the Department recommended that the Permit be revoked.

Mr. Staton requested a hearing. (See Permit Verification Data form.) Therefore, pursuant to MCA § 85-2-314, the Department required Mr. and Mrs. Staton to show cause why their Permit should not be revoked.

5. As the initiator of the revocation action, the Department has the burden of production (going forward) in this matter. Therefore, it must produce evidence to show that a question exists as to whether the Permit was perfected within the terms in which it was issued, and that the evidence is such that reasonable minds might differ as to whether sufficient

grounds exist for a revocation of the Permit in this matter.

See In the Matter of Beneficial Water Use Permits

Nos. 31587-q41F and 33294-q41F, Proposal for Decision (March 4, 1985); 3 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 16.9 (2d ed. 1980).

6. The Department met its burden by showing that the Permittees have never applied water to the beneficial uses for which the Permit was granted (see Findings of Fact 4 and 5); that is, no irrigation or fishery has ever been developed. In addition, the Department has produced evidence that the means of diversion is inadequate to sustain a fishery (see Findings of Fact 4 and 5).

7. The Department having discharged its burden of production, the Permittees must meet their burden of persuasion; i.e., the burden of proving that it is more likely than not that insufficient grounds exist for revocation of the Permit in this matter. See In the Matter of Beneficial Water Use Permit Nos. 31587-q41F and 33294-q41F, Proposal for Decision (March 4, 1985); 3 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 16.9 (2d ed. 1980).

8. The Permittees have failed to meet their burden of persuasion, since they did not show sufficient cause why the Permit in this matter should not be revoked.

Mr. Staton's testimony confirms that the water which occasionally has collected in the reservoir has never been used for irrigation or for fishery use, the purposes for which the Permit was granted. (See Findings of Fact 5, 7, and 8.) In

addition, the testimony presented by Mr. Staton indicates that the reservoir is not an adequate means of diversion. It does not hold water long enough to maintain a fishery, and apparently not long enough to be used for irrigation, since Mr. Staton claims that the water is never available when it is needed for irrigation. (Since a reservoir is a storage facility, it may be presumed that water could be stored until such time as it was needed for irrigation, if the reservoir was capable of holding water.)

9. The Staton's Permit to Appropriate Water specified that the diversion and distribution works had to be completed, and water applied to beneficial use as specified on the Permit, by June 15, 1980. The Permittees did not file a request for an extension of time or otherwise indicate that it would take longer to develop the proposed appropriation. By filing a Notice of Completion which attested that his water appropriation was completed, Mr. Staton claimed that his proposed appropriation was fully developed. However, as the testimony clearly shows, the Permittees had not in fact applied the water to the beneficial uses specified in the Permit.

Mr. Staton stated his belief that he had completed his proposed project by constructing the reservoir. (See Finding of Fact 8.) However, the diversion and distribution works cannot be found to be "completed" when the reservoir as constructed is not adequate to provide water for the irrigation and fishery purposes which the Permittees applied for and were granted.



Mr. Staton claims that the reservoir eventually may be sealed, either through siltation or by lining it in the eventuality that he develops the spring at the head of the creek (Finding of Fact 6), and that he would then use it for irrigation and possibly for a fishery. However, the issue is not whether there is a possibility that the Permittees may ever develop the water right, but whether they did so in the time frame and the terms allowed them by the Permit and by the statutes.

Even if the Permittees were found to have completed the diversion works, it is necessary for them to actually have applied the water to the beneficial uses set forth in the Permit. This requirement of actual beneficial use is not optional. The statutes are replete with language which specifies that the water must be put to beneficial use (See § 85-1-101 and 85-2-311, for example), and reflect the basic water law concept that a water right is usufructuary; that is, it must be put to use in order for the right to be perfected. See, for example, In the Matter of the Application for Change of Appropriation Water Rights Nos. 26719-c76LJ and 26720-c76LJ by Meadow Lake Country Club Estates (Final Order, October 6, 1981) Proposal for Decision (August 25, 1981) at page 56.

The right does not vest upon completion of the appropriation works. MCA § 85-2-314 and § 85-2-315 clearly contemplate that the actual use must have been developed before a Certificate of Water Right can be issued. The issuance of a Permit to the Permittees granted them the right to develop the uses and

thereby perfect their water right, entitling them to retain the priority date of the Permit and giving them the legal protection of the priority system. (See In the Matter of Beneficial Water Use Permit Nos. 31587-c41F and 33294-c41F, cited supra.)

However, a Permittee is not entitled to maintain a priority date for a use which has not, and possibly never may be, developed.

10. Mr. Staton has argued that the water has been put to beneficial use, even though not to the uses applied for and granted in the Permit. (See Finding of Fact 7, Mr. Staton's response to verification data as set forth in Statement of the Case.)

It is unlikely that much use of any kind has been made of the reservoir, since it has only filled five or six times (see Finding of Fact 5), and does not hold water for very long. However, whatever uses may have been made of it by stock and by wildlife (Finding of Fact 7) are not the uses applied for by the Permittees, and not the uses for which the Permit was granted. It may well be argued that the uses, if any, were "accidental", since the Permittees did not intend (as shown by their Application) to provide for these uses and did not divert water to do so.

In any case, the statutory language is quite clear that the water must be applied to "the beneficial use contemplated in the permit". (MCA § 85-2-314.) If an appropriator wishes to use the water for another purpose, he must apply for, and receive, Department approval of the change in appropriation right. (See MCA § 85-2-402.) In the present instance, the Permittees did

not file an Application to change the use of their permitted water right, even though they were given an opportunity to do so. (See Statement of the Case.) Whether they could have met the criteria for issuance of a change authorization is not the subject of the present action.

WHEREFORE, based upon the proposed Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Beneficial Water Use Permit No. 20074-s76G, granted to Dean and Mary Staton, hereby is revoked.

DONE this 17<sup>th</sup> day of February, 1987.

Peggy A. Elting  
Peggy A. Elting, Hearing Examiner  
Department of Natural Resources  
and Conservation  
1520 E. 6th Avenue  
Helena, Montana 59620-2301  
(406) 444 - 6612

NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the proposed order. Any party adversely affected by the Proposal for Decision may file exceptions thereto with the Hearing Examiner (1520 E. 6th Ave., Helena, MT 59620-2301); the exceptions must be filed within 20 days after the proposal is served upon the party. MCA § 2-4-623.

CASE # 20074

Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed. Any adversely affected party has the right to present briefs and oral arguments before the Water Resources Administrator, but these requests must be made in writing within 20 days after service of the proposal upon the party. MCA § 2-4-621(1). Oral arguments held pursuant to such a request will be scheduled for the locale where the contested case hearing in this matter was held, unless the party asking for oral argument requests a different location at the time the exception is filed.

Parties who request oral argument are not entitled to present evidence that was not presented at the original contested case hearing: no party may give additional testimony, offer additional exhibits, or introduce new witnesses. Rather, the parties will be limited to discussion of the information which already is present in the record.

AFFIDAVIT OF SERVICE  
MAILING

STATE OF MONTANA                    )  
  ) ss.  
County of Lewis & Clark )

Sally Martinez, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on February 19, 1987, she deposited in the United States mail, first class postage prepaid, a Proposal for Decision by the Department of Natural Resources & Conservation (DNRC), In the Matter of Application for Beneficial Water Use Permit by Dean & Mary Ann Staton, Application No. 20074-s76G addressed to each of the following persons or agencies:

- |  |  |
|--|--|
| 1. Dean & Mary Ann Staton<br>606 Chestnut St.<br>Anaconda, MT 59711                                  | 3. Candy West<br>Staff Attorney<br>DNRC<br>(hand-deliver)                    |
| 2. T.J. Reynolds<br>Water Rights Bureau<br>Field Office Manager<br>DNRC<br>(inter-departmental mail) | 4. Gary Fritz<br>Administrator<br>Water Resources Division<br>(hand-deliver) |

DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

by Sally Martinez

STATE OF MONTANA                    )  
  ) ss.  
County of Lewis & Clark )

On this 19th day of February, 1987, before me, a Notary Public in and for said state, personally appeared Sally Martinez, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Vudy Lohu  
Notary Public for the State of Montana  
Residing at Helena, Montana  
My Commission expires 3-1-88

CASE # 20074